

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TOMITA TECHNOLOGIES USA, LLC, AND TOMITA  
TECHNOLOGIES INTERNATIONAL, INC.,

Plaintiffs,

v.

NINTENDO CO., LTD., AND  
NINTENDO OF AMERICA INC.

Defendants.  
-----X

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CIVIL CASE MANAGEMENT  
PLAN  
(JUDGE RAKOFF)

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Case No. 1:11-cv-04256-JSR  
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**This Court requires that this case shall be ready for trial on  
03-19-2012.**

After consultation with counsel for the parties, the following Case Management Plan is adopted. This plan is also a scheduling order pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure.

- A. **Jury.** This case is to be tried to a jury.
- B. **Joinder of additional parties** must be accomplished by **September 15, 2011**.
- C. **Amended pleadings** may be filed without leave of Court until **September 15, 2011**.
- D. **Markman Hearing.** The parties request a claim construction hearing.
1. The parties are to exchange terms to be construed on **October 4, 2011**.
  2. The parties are to exchange proposed claim constructions on **October 13, 2011** and then are to meet and confer to determine if they can agree to meanings and reduce the number of terms to be construed.
  3. The parties are to simultaneously file and serve opening Markman briefs on **October 27, 2011**,

4. The parties are to simultaneously file and serve opposing Markman briefs on **November 14, 2011.**

5. The Court shall hold a Markman Hearing on November 22, 2011 at 10 AM  
The parties respectfully request November 22, 2011 as the date for the Markman Hearing.

**E. Discovery**

1 **Rule 26(a) Disclosures.** Disclosures pursuant to Fed. R. Civ. P. 26(a) must be served by **August 29, 2011.**

2. **Documents.** First request for production of documents, if any, must be served by **August 29, 2011.** Further document requests may be served as required, but no document request may be served later than 30 days prior to the date of the close of discovery as set forth in item 6 below.

3. **Interrogatories.** Interrogatories pursuant to Rule 33.3(a) of the Local Civil Rules of the Southern District of New York must be served by **August 29, 2011.** No other  
*(except for the preliminary infringement contention interrogatories agreed to by the parties)*  
interrogatories are permitted except upon prior express permission of Judge Rakoff. No  
Rule 33.3(a) interrogatories need be served with respect to disclosures automatically required by Fed. R. Civ. P. 26(a).

4. **Experts.** Every party-proponent of a claim (including any counterclaim, cross-claim, or third-party claim) that intends to offer expert testimony in respect of such claim must make the disclosures required by Fed. R. Civ. P. 26(a)(2) by **January 9, 2012.**  
Every party-opponent of such claim that intends to offer expert testimony in opposition to such claim must make the disclosures required by Fed. R. Civ. P. 26(a)(2) by **January**

**30, 2012.** No expert testimony (whether designated as “rebuttal” or otherwise) will be permitted by other experts or beyond the scope of the opinions covered by the aforesaid disclosures except upon prior express permission of the Court, application for which must be made no later than 10 days after the date specified in the immediately preceding sentence. All experts may be deposed, but such depositions must occur within the time limit for all depositions set forth below.

5. **Depositions.** All depositions (including any expert depositions) must be completed by **February 13, 2012.** Unless counsel agree otherwise or the Court so orders, depositions shall not commence until all parties have completed the initial disclosures required by Fed. R. Civ. P. 26(a)(1) or until four weeks from the date of this Order, whichever is earlier. Depositions shall proceed concurrently, with no party having priority, and no deposition shall extend beyond one business day without prior leave of the Court..

6. **Requests to Admit.** Requests to Admit, if any, must be served by **January 13, 2012.**

7. **All discovery** is to be completed by **February 13, 2012.** Interim deadlines for items 2–6 above may be extended by the parties on consent without application to the Court, provided the parties are certain they can still meet the discovery completion date set forth in this paragraph. The discovery completion date may be adjourned only upon a showing to the Court of extraordinary circumstances, and may not be extended on consent.

**F. Post-discovery summary judgment motions** in the form prescribed by the Court’s Individual Rules of Practice may be brought on without further consultation with the Court

provided that a Notice of any such motion, in the form specified in the Court's Individual Rules of Practice, is filed no later than one week following the close-of-discovery date and provided that the moving papers are served by **February 21, 2012**, answering papers by **March 6, 2012**, and reply papers by **March 13, 2012**. Each party must file its respective papers with the Clerk of the Court on the same date that such papers are served. Additionally, on the same date that any papers are served and filed, counsel filing and serving the papers must arrange to deliver courtesy non-electronic hard copies to the Courthouse for delivery to Chambers.

**G. A final pre-trial conference**, as well as oral argument on any post-discovery summary judgment motions, shall be held on March 22, 2012 at 4 pm, at which time the Court shall set a firm trial date. The timing and other requirements for the Joint Pretrial Order and/or other pre-trial submissions shall be governed by the Court's Individual Rules of Practice.

**H. All motions and applications** shall be governed by Judge Rakoff's Individual Rules of Practice. Counsel shall promptly familiarize themselves with all of the Court's Individual Rules, as well as with the Local Rules for the United States District Court for the Southern District of New York.

SO ORDERED



JED S. RAKOFF  
U.S.D.J.

DATED: New York, New York

8/15/11